



US Army Corps
of Engineers®
San Francisco District

Regulatory Division
1455 Market Street, 16th Floor
San Francisco, CA 94103-1398

SAN FRANCISCO DISTRICT

PUBLIC NOTICE

PROJECT: Regional General Permit 5 (RGP 5)
For Emergency Repairs

PUBLIC NOTICE NUMBER: 28218S

PUBLIC NOTICE DATE: September 1, 2014

COMMENTS DUE DATE: September 30, 2014

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Proposed Regional General Permit for Repair and Protection Activities in Emergency Situations

1. **INTRODUCTION:** The San Francisco District of the U.S. Army Corps of Engineers (USACE) is proposing to re-issue its Regional General Permit (RGP) 5, which would allow expedited authorization for discharges or work in waters of the United States within the District for repair or protection activities in emergency situations. This proposal is being processed pursuant to the provisions of Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (RHA) of 1899 (33 U.S.C. 403).

The current RGP 5 for emergency repairs was issued on August 31, 2009 and expires on August 31, 2014. During this time period 27 projects have been authorized to date using RGP 5, including 13 projects by state, county, or local agencies to protect public infrastructure, 9 projects by property owners to protect residences and other privately owned structures, and 5 projects to protect or restore natural resources. Please see our webpage for further information regarding the current RGP 5:

<http://www.sfn.usace.army.mil/Missions/Regulatory/EmergencyPermits.aspx>.

2. **PROPOSED ACTION:** USACE proposes to re-issue RGP 5 through August 31, 2019 (i.e., through five (5) winter seasons). The process for emergency projects seeking authorization under RGP 5 would remain similar

to that outlined in the attachment. The definition of an “emergency” remains consistent with the State of California’s California Environmental Quality Act (CEQA). Project applicants must seek formal approval from USACE **before** taking action under the authority of RGP 5, and a post construction report is required **after** the work is completed.

3. STATE AND LOCAL APPROVALS:

Water Quality Certification: Under Section 401 of the CWA (33 U.S.C. § 1341), USACE must obtain a water quality certification before the RGP may be issued. USACE is requesting renewal of the water quality certification for RGP 5 from the State Water Resources Control Board (SWRCB – for emergency projects on non-tribal land) and the Environmental Protection Agency (EPA – for emergency projects on tribal lands). Comments regarding water quality issues associated with RGP 5 should be sent by the close of the comment period of this Public Notice to the SWRCB (Program Manager, CWA Section 401 WQC Program, Division of Water Quality, California State Water Resources Control Board, P.O. Box 100, Sacramento, California 95812-0100) or the EPA (Chief, Wetland Regulatory Office, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105).

Coastal Zone Management: USACE is requesting concurrence from the San Francisco Bay Conservation and Development Commission (BCDC) and the California Coastal Commission (CCC) that RGP 5 is consistent with the federal Coastal Zone Management Act (CZMA) of 1972, as amended (16 U.S.C. § 1456(c) *et seq.*). Comments regarding CZMA issues associated with RGP 5 should be sent by the close of the comment period to BCDC (Executive Director, San Francisco Bay Conservation and Development Commission, 455 Golden Gate Avenue, Suite 10600, San Francisco, CA 94102-7019) or CCC (California Coastal Commission, Headquarters and North Central Coast District Office, 45 Fremont Street, Suite 2000, San Francisco, California 94105-2219).

4. COMPLIANCE WITH VARIOUS FEDERAL LAWS:

National Environmental Policy Act (NEPA): USACE has made a *preliminary* determination that the proposed action neither qualifies for a Categorical Exclusion nor requires the preparation of an Environmental Impact Statement for the purposes of NEPA. At the conclusion of the public comment period, USACE will assess the environmental impacts of the proposed action in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4347), the Council on Environmental Quality's Regulations at 40 C.F.R. Parts 1500-1508, and USACE Regulations at 33 C.F.R. Part 325. The final NEPA analysis will normally address the direct, indirect, and cumulative impacts that result from regulated activities within the jurisdiction of USACE and other non-regulated activities USACE determines to be within its purview of Federal control and responsibility to justify an expanded scope of analysis for NEPA purposes. The final NEPA analysis will be incorporated in the decision documentation that provides the rationale for re-issuing RGP 5. The final NEPA analysis and supporting documentation will be on file with the San Francisco District, Regulatory Division.

Endangered Species Act (ESA): Section 7(a)(2) of the ESA of 1973, as amended (16 U.S.C. § 1531 *et seq.*), requires Federal agencies to consult with either the U.S. Fish and Wildlife Service (USFWS) or the National Marine Fisheries Service (NMFS) to ensure actions authorized, funded, or undertaken by the agency are not likely to jeopardize the continued existence of any Federally-listed species or result in the adverse modification of designated critical habitat. Section 7 also

contains provisions for consultation in the event of emergencies that threaten human welfare or property. USACE will coordinate with USFWS and/or NMFS under these emergency consultation provisions for projects seeking authorization under RGP 5 that may impact ESA listed species or critical habitat.

Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA): Section 305(b)(2) of the MSFCMA of 1966, as amended (16 U.S.C. § 1801 *et seq.*), requires Federal agencies to consult with the NMFS on all proposed actions authorized, funded, or undertaken by the agency that may adversely affect essential fish habitat (EFH). EFH is defined as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. EFH is designated only for those species managed under a Federal Fisheries Management Plan (FMP), such as the *Pacific Groundfish FMP*, the *Coastal Pelagics FMP*, and the *Pacific Coast Salmon FMP*. USACE will request expedited EFH consultation with NMFS for projects seeking authorization under RGP 5 that may impact EFH.

Marine Protection, Research, and Sanctuaries Act (MPRSA): Section 302 of the MPRSA of 1972, as amended (16 U.S.C. § 1432 *et seq.*), authorizes the Secretary of Commerce, in part, to designate areas of ocean waters, such as the Cordell Bank, Gulf of the Farallones, and Monterey Bay, as a National Marine Sanctuary (NMS) for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After such designation, activities in sanctuary waters authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with Title III of the Act. No Department of the Army Permit will be issued until the applicant obtains the required certification or permit. USACE will notify and seek comments from appropriate NMS staff for projects seeking authorization under RGP 5 that may impact a NMS.

National Historic Preservation Act (NHPA): Section 106 of the NHPA of 1966, as amended (16 U.S.C. § 470 *et seq.*), requires Federal agencies to consult with the appropriate State Historic Preservation Officer (SHPO) to take into account the effects of their undertakings on historic properties listed in or eligible for listing in the *National Register of Historic Places*. Section 106 of the Act further requires Federal agencies to consult with the appropriate Tribal Historic Preservation Officer or any Indian tribe to take into account the effects of their undertakings on historic properties, including traditional

cultural properties, trust resources, and sacred sites, to which Indian tribes attach historic, religious, and cultural significance. As the Federal lead agency for this undertaking, USACE has made a *preliminary* determination that historic or archaeological resources are not likely to be adversely affected by RGP 5, given that most emergency projects occur in areas subject to erosion, flooding, or other disturbance that would affect the integrity of any resources present, and any authorized repair work would not cause impacts beyond those which led to the emergency situation. By copy of this public notice, USACE requests comments from the SHPO and will render a final determination on the need for consultation at the close of the comment period, taking into account any comments provided.

6. PUBLIC INTEREST EVALUTION: The decision on whether to issue a RGP 5 will be based on an evaluation of the probable impacts, including cumulative impacts, of the action and its intended use on the public interest. Evaluation of the probable impacts requires a careful weighing of the public interest factors relevant in each particular case. The benefits that may accrue from the action must be balanced against any reasonably foreseeable detriments of its implementation. The decision on RGP 5 issuance will, therefore, reflect the national concern for both protection and utilization of important resources. Public interest factors which may be relevant to the decision process include conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people.

7. CONSIDERATION OF COMMENTS: USACE is soliciting comments from the public; Federal, State and local agencies and officials; Native American Nations or other tribal governments; and other interested parties in order to consider and evaluate the impacts of the proposed action. All comments received by USACE will be considered in the decision on whether to reissue RGP 5 and/or modify its provisions. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, and other environmental or public interest factors addressed in a final environmental assessment or environmental impact statement. Comments are also used to determine the need

for a public hearing and to determine the overall public interest of the action.

8. SUBMITTING COMMENTS: During the specified comment period, interested parties may submit written comments to Greg Brown, San Francisco District, Regulatory Division, 1455 Market Street, 16th Floor, San Francisco, California 94103-1398; comment letters should cite the project name and public notice number to facilitate review by the Regulatory Permit Manager. Comments may include a request for a public hearing on the action prior to a final determination; such requests shall state, with particularity, the reasons for holding a public hearing. All substantive comments will be addressed by USACE. Additional information or details on any subsequent modifications to RGP 5 of a minor nature may be obtained from the Regulatory Permit Manager by telephone or e-mail cited in the public notice letterhead. An electronic version of this public notice may be viewed under the *Public Notices* tab on the USACE website:

<http://www.spn.usace.army.mil/Missions/Regulatory>.